



900 W. 48th Place, Suite 900, Kansas City, MO, 64112 • 816.753.1000

August 27, 2014

David D. Ferguson
(816) 360-4311
(816) 572-5311 Direct Fax
dferguson@polsinelli.com

Via Email

Michael C. Hartmere
VENABLE LLP
Rockefeller Center
1270 Avenue of the Americas, 25th Floor
New York, NY 10020
mchartmere@Venable.com

Gregory A. Cross
Heather Deans Foley
Colleen Mallon
VENABLE LP
750 East Pratt Street, Suite 900
Baltimore, MD 21202
gacross@Venable.com
hdfoley@Venable.com
cmmallon@Venable.com

**Re: Appendix Designations --
U.S. Bank Nat'l Assn. v. Dexia Real Estate Capital Markets
Case No. 12-cv-09412-SAS; Appellate Case No. 14-2859**

Dear Counsel:

In accordance with Federal Rule of Appellate Procedure 30(b)(1), and because the Trust has not agreed to the preparation of a deferred appendix, Dexia hereby designates those parts of the record that Dexia intends to include in the appendix, as follows:

1. the Notice of Appeal (Doc. 95);
2. the SDNY ECF docket sheet (excerpted) with relevant docket entries highlighted, as shown in the attached Exhibit A;
3. the Trust's Complaint (Doc. 1);
4. Dexia's Answer (Doc. 19);
5. the November 19, 2013 hearing transcript (to be docketed as Doc. 99);
6. the March 10, 2014 hearing transcript (Doc. 64);



Michael C. Hartmere
Gregory A. Cross
Heather Deans Foley
Colleen Mallon
August 27, 2014
Page 2

7. the March 19, 2014 hearing transcript (Doc. 66);
8. the Opinion and Order (Doc. 90);
9. Nov. 5, 2013 Ferguson Letter re: Discovery Dispute (Doc. 35), and Exhibit C (Doc. 35-3) thereto;
10. Nov. 8, 2013 Cross Letter re: Discovery Dispute (Doc. 36);
11. Feb. 26, 2014 Ferguson Letter re: Discovery Dispute (Doc. 56);
12. Mar. 3, 2014 Cross Letter re: Discovery Dispute (Doc. 58);
13. the Trust's Statement of Undisputed Material Facts (Doc. 70);
14. Shearer Declaration in Support of Plaintiff's Motion for Summary Judgment (Doc. 71);
15. Foley Declaration in Support of Plaintiff's Motion for Summary Judgment (Doc. 72);
16. Mallon Declaration in Support of Plaintiff's Motion for Summary Judgment (Doc. 73), and exhibits (Docs. 73-1 to 73-13) thereto;
17. Dexia's Statement of Undisputed Material Facts (Doc. 76);
18. Ferguson Affidavit in Support of Dexia's Motion for Summary Judgment (Doc. 77), and exhibits (Docs. 77-1 to 77-10) thereto;
19. Cools Affidavit in Support of Dexia's Motion for Summary Judgment (Doc. 78);
20. Trust's Response to Dexia's Statement of Undisputed Material Facts in Support of Dexia's Motion for Summary Judgment (Doc. 80);
21. Dexia's Counter-Statement to Plaintiff's Local Rule 56.1 Statement of Facts in Support of Plaintiff's Motion for Summary Judgment (Doc. 82);



Michael C. Hartmere
Gregory A. Cross
Heather Deans Foley
Colleen Mallon
August 27, 2014
Page 3

22. Ferguson Affidavit in Support of Dexia's Response to Plaintiff's Motion for Summary Judgment (Doc. 83), and exhibits (Docs. 83-1 to 83-3) thereto;
23. Kutas Affidavit in Support of Dexia's Opposition to Plaintiff's Motion for Summary Judgment (Doc. 84), and Exhibit A (Doc. 84-1) thereto;
24. Mallon Declaration in Opposition to Dexia's Motion for Summary Judgment (Doc. 85), and exhibits (Docs. 85-1 to 85-15) thereto;
25. the Trust's Responses to Dexia's Statement of Additional Material Facts (Doc. 87);
26. Mallon Declaration in Support of Plaintiff's Reply in Support of Its Motion for Summary Judgment (Doc. 88), and exhibits (Docs. 88-1 to 88-2) thereto;
27. July 3, 2014 Letter from G. Edgar James to Judge Schiendlin, and Exhibit A thereto; and
28. July 8, 2014 Letter from Gregory A. Cross to Judge Schiendlin.

Items 26 and 27 are not yet part of the record on appeal because they were sent to Judge Schiendlin rather than being ECF filed. Because Judge Schiendlin cited to both items in her Opinion and Order and Dexia believes the items are necessary to a full and complete record on appeal, however, Dexia intends to supplement the record with those items under Fed. R. App. 10(e), either through stipulation with the Trust or by motion. Please indicate, either in the Trust's responsive designation letter or in separate correspondence within 14 days of this letter, whether the Trust will agree to this supplementation.

If the Trust intends to designate additional parts of the record for inclusion in the Appendix, please serve the Trust's designations within 14 days of this letter, in accordance with Federal Rule of Appellate Procedure 30(b)(1).



Michael C. Hartmere
Gregory A. Cross
Heather Deans Foley
Colleen Mallon
August 27, 2014
Page 4

Sincerely,

/s/ David D. Ferguson

David D. Ferguson

DDF:tm